

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,) Docket No. 3:06-CR-719
Plaintiffs,) Toledo, Ohio
v.) April 21, 2008
MOHAMMED AMAWI, ET AL.,)
Defendants.)

TRANSCRIPT OF JURY TRIAL, VOLUME 30
BEFORE THE HONORABLE JAMES G. CARR
UNITED STATES DISTRICT JUDGE

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1 THE COURT: I think Mr. Ivy's calling in on the
2 bridge line in just a moment. I'll be right back.

3 Do you have a pending ex parte motion regarding a
4 CJA motion or not? Is it only an El-Hindi motion, or do
5 you have one as well?

6 MR. DOUGHTEN: No. It was only El-Hindi.

7 THE COURT: And I sent that in yesterday.

8 MR. HARTMAN: Saw that. Thank you, Judge.

9 THE COURT: Why don't we go ahead and get started
10 with whatever the issues are, and we can pickup -- at least
11 tell me what the -- Amy, here the -- just some stuff.

12 I guess we probably should wait.

13 MR. SOFER: Is the defendant's, Masloun's,
14 appearance being waived?

15 MR. DOUGHTEN: Yes, it is, Your Honor.

16 THE COURT: And you and Jeff are going to play
17 tag team this morning. Is that right, David?

18 MR. DOUGHTEN: Yes, it is.

19 THE COURT: No problem, depending upon how long
20 the hearing lasts. I'm just reading Mr. Getz E-mail.

21 Mr. Ivy, can you hear me okay? You can hear me
22 okay, Mr. Ivy.

23 MR. IVEY: Yes, I can, Your Honor.

24 THE COURT: Okay. If you can't hear other
25 people, let us know. I just opened an E-mail from

1 Mr. Getz. What's the problem? Let's start -- where are
2 you with producing your version of transcripts?

3 MR. HARTMAN: Your Honor, we have been producing
4 transcripts and excerpts separately. I would say we have
5 produced probably 75 percent of the transcripts. We're
6 ready to produce the rest, I think, today, I believe; and
7 we're --

8 THE COURT: Today, by when?

9 MR. HARTMAN: Noon.

10 MR. BOSS: There are quite a number of them that
11 the staff are presently typing the excerpts that we've
12 already identified so it can be transmitted electronically
13 to the Government as well as the forensic evidence people.

14 THE COURT: Well then, it looks as though we're
15 going to have to -- you want to do it all at once; is that
16 right? And you haven't seen them, correct?

17 MR. SOFER: What -- by all at once, do you mean
18 discussing this all at once?

19 THE COURT: Yes, the issues relating to the
20 various transcripts.

21 MR. SOFER: We're here, Judge; and if you have a
22 little time, I think we might as well begin. But I do
23 think, in order for us to address them, obviously we have
24 to have them all.

25 THE COURT: Why don't we talk about the hearsay

1 and relevance issues. It seems to me that you don't
2 need -- if I understand correctly, you don't need all the
3 transcripts. Because obviously, based on what you've seen
4 already, you have issues you want to raise.

5 MR. SOFER: We do, Judge.

6 THE COURT: Let me declare a time -- just a quick
7 time out. How are we doing with the stipulations? Are
8 they pretty much put to bed, what I call definitions?

9 MR. HERDMAN: Your Honor, this is Justin Herdman.
10 I finished the clean list. I just need to index them as we
11 discussed last night, and I should have that done this
12 morning.

13 THE COURT: Okay. So far as you're aware,
14 Mr. Ivy, has Mr. Whitmer seen the -- is he doing the work
15 for your side on that?

16 MR. IVEY: He is, Your Honor. My understanding
17 is -- I spoke with him yesterday on the phone.

18 THE COURT: I'm sorry. If you're on a speaker
19 phone, probably get off, because --

20 MR. IVEY: Okay.

21 THE COURT: -- you were breaking up.

22 MR. IVEY: Okay. Is this better?

23 THE COURT: That's somewhat better, because it
24 came out resembling Greek when you were speaking.

25 MR. IVEY: All right.

1 THE COURT: And I don't think you were -- I don't
2 think you were speaking Greek, but go ahead.

3 MR. IVEY: No. From my understanding is that
4 Mr. Whitmer-Rich -- the conversation --

5 THE COURT: He spoke with the Government at 4:15
6 yesterday and didn't know about the conversation.

7 MR. HERDMAN: Your Honor, I think we're down to
8 like one.

9 THE COURT: Okay. We'll fuss with that at some
10 point. And in fact, if you and he are talking to each
11 other and want to speak to me sometime during the day, just
12 call my office; and they'll interrupt whatever I'm doing to
13 talk to you. Okay?

14 MR. IVEY: Okay.

15 THE COURT: Okay. Let's turn now to the issues
16 on hearsay -- first hearsay, and then -- and maybe if --
17 unfortunately, I didn't bring all those transcripts that
18 you gave me yesterday over the weekend, but perhaps we can
19 talk about some specific examples or if you want to outline
20 generally what your concerns are.

21 MR. SOFER: I think a general outline, Judge,
22 will allow the Court to at least begin to decide the issue.
23 The major question here is whether or not the defense can
24 essentially put into evidence the defendants' statements
25 through Mr. Griffin and through cross-examination of

1 Mr. Griffin. And the basic issue is like in any case
2 whether or not the defense can put in what I believe, in
3 their opinions, is -- well, the Government's opinion is
4 self-serving hearsay. In other words, if the Government
5 played portions of tapes, the defense now wishes to. And I
6 think that Mr. Ivy said yesterday that they do not -- they
7 are not interested in actually introducing the tapes,
8 themselves, into evidence through Mr. Griffin.

9 But to the extent that we have seen larger chunks
10 of transcripts from the El-Hindi team, we suspect that they
11 are going to attempt to put these chunks of transcript into
12 evidence through Darren Griffin. And I don't believe that
13 they can do that, Judge, for a variety of reasons. The
14 first one being that it is hearsay.

15 801(d)(2) allows a party to put in admissions of
16 the party opponent. But that does not allow a defendant to
17 put in -- his own self-serving statements in through
18 another witness. In fact, the rules are clear. The case
19 law's very clear that that would undermine the entire
20 principle that's about hearsay essentially if a defendant
21 was able to do that. And so all we're concerned about from
22 a general standpoint is that the defense not be permitted
23 to put in swaths of recordings through the Government's
24 witness.

25 If they want to do that, if they want to say --

1 if they want to be able to argue that certain things were
2 happening at that period of time, then they have to
3 testify. I mean, there has to be a witness on the stand
4 who can testify about this. And so if -- if somebody
5 wanted to cross-examine Mr. Griffin about statements, then
6 certainly they could ask the usual questions. Perhaps if
7 they'd be interested in looking for prior inconsistent
8 statements, there may be some other reason to cross-examine
9 him.

10 But even if those statements -- for example, if
11 the exception to the hearsay rule was a prior inconsistent
12 statement, even then the Court would have to give an
13 appropriate instruction to the jury as to what these other
14 statements are. In fact, they're not coming in for the
15 truth instead attempting to appease the witness.

16 And so again, from a general standpoint, a
17 defendant's own statements are hearsay, particularly if
18 they are self-serving; and we've seen swaths of transcripts
19 that look to be exactly that.

20 The rule of completeness does not apply to these
21 statements either. The rule of completeness is a very
22 narrow -- narrowly tailored rule which talks about when the
23 wrong impression is made -- you know, clearly wrong
24 impression is made by playing only a portion of the tape or
25 introducing only a portion of the document; and it leaves

1 some factual misrepresentation essentially out for the
2 jury. The rule of completeness would apply, but we don't
3 believe that that rule applies to anything here.

4 The defense may try to argue that this evidence
5 is coming in to show state of mind of the defendants; and
6 certainly, given the way that they've put this together,
7 the kinds of transcript we're getting, that would viciate
8 essentially the need for any defendant to testify in any
9 case if they could use -- if they could use this -- this
10 state of mind concept essentially to -- to allow vast
11 swaths of hearsay to come in. And again out of court
12 statements of somebody and there's no -- there is no
13 particular, I believe, exception to the hearsay rule. So
14 from a general standpoint that's our concern.

15 Certainly, the defense can use the tapes to
16 cross-examine the witness if the witness gives an answer to
17 questions that allow the tapes to be played. And that
18 foundation also has to be laid. Don't get to just play the
19 tapes for the witness and ask to confront the witness, for
20 instance, with a prior consistent statement. They ask the
21 witness, Did you do this? Did you say that? And then --
22 even then only those portions of the tapes which are
23 Mr. Griffin's statements would be in play. And so that's
24 our -- that is our general concern, and I don't think the
25 defense can or should be permitted to essentially

1 circumvent the rules of evidence in this way.

2 Again, we're guessing, of course, to some extent
3 that this is what's going on; but Mr. Ivy's statements
4 yesterday seem consistent with all of the rules and
5 procedures and the law. We have given what we've gotten
6 from the El-Hindi team. We have greater concern because of
7 the context that this appears that they are looking to
8 introduce these tapes.

9 MR. HARTMAN: Suffice it to say, we disagree,
10 first of all. I disagree with the Government's --

11 THE COURT: Hold on. Can those of you on the
12 phone hear what's being said? Because if not, I should
13 have said this for you, Mr. Sofer, too. You're welcome to
14 remain seated if -- are there any problems with --

15 MR. IVEY: Your Honor, this is Tim Ivy. I could
16 hear Mr. Sofer fine.

17 THE COURT: Okay.

18 MR. HARTMAN: Can you hear me?

19 MR. IVEY: I can hear you, Steve. I like what
20 you're saying.

21 MR. DOUGHTEN: This is David Doughten. I can
22 hear Steve without the phone.

23 THE COURT: Go ahead. Why don't you stand up
24 just because it's -- and if you can't hear, say so.

25 MR. HARTMAN: Suffice it to say, we disagree with

1 the Government on a number of fronts, the rule of
2 completeness.

3 Number two, I don't think it's appropriate to
4 talk about a blanket issue of hearsay.

5 THE COURT: You know, I agree. And I'm
6 reluctantly coming to the conclusion that we better adjourn
7 this segment until all the transcripts have been made
8 available. Start tomorrow morning, we'll start the trial
9 on Wednesday. There's nothing else we can do, because I
10 suspect that we're going to need the time to go through
11 these statement by statement, tape by tape, ruling by
12 ruling. I don't know how else we can do it in an
13 organizable, sensible way.

14 My question to you is generally, though: Are
15 you -- are you -- what are the purposes for which you are
16 offering various statements?

17 Let me ask you this predicate question: Is the
18 representation correct that you -- and I assume it is, but
19 just for the record -- is the representation that Mr. Sofer
20 made correct that you have provided them with statements,
21 you have designated portions of recordings and the related
22 transcripts in anticipation of trying to use them during
23 cross-examination, which include conversations, A, that
24 were -- are portions of the conversation we've heard; in
25 other words, immediately proceeding or following and/or B

1 are separate and distinct, maybe part of the overall
2 discussion during a particular period of time, but are
3 separated, but as to which there was intervening discussion
4 or events or activity?

5 MR. HARTMAN: Yes, Mr. Sofer is correct; and we
6 brought this issue up once before with -- with the Court.
7 I don't know that we've reached a resolution about that.

8 THE COURT: They're both kinds of excerpts. In
9 other words, the two people said A, B and C; and you now
10 want to show D and E -- two people said D and E. And you
11 want to show X and Y.

12 MR. HARTMAN: We do have both --

13 THE COURT: Okay.

14 MR. HARTMAN: -- in part because --

15 THE COURT: And then what -- I mean, what
16 extent -- I mean, for what purpose are you offering them?
17 Are you offering them to show -- I would assume A, B, C,
18 now D and E will be for completeness. And I mean, why are
19 you playing -- or anticipating one play the various
20 portions? This is a general proposition.

21 MR. HARTMAN: There are a whole host of reasons
22 that we intend to play other portions of the X and Y, as
23 you call it. Very little of it has to do with the truth.
24 We -- we will obviously be able to explain that to you in
25 more detail as we do it, but it's -- it's really -- I mean,

1 very little of it has to do with the truth -- being offered
2 for the truth.

3 THE COURT: Let me ask you this: I mean,
4 obviously assuming that these are played or some portion,
5 is it to -- for example, let's say Mr. El-Hindi says, Here
6 I'm doing this. Is it to prove that he was doing that, or
7 is it -- or this, whatever the this is? And if so, it
8 would seem to me to say to Mr. Griffin, at some point
9 during that conversation, did this occur? And he said,
10 Yes, it did. Then, I don't think we need the recording.
11 If he says, No, it didn't, then I think we probably do need
12 the recording. And one exception that comes to mind is the
13 presence sayings impression 8031, but I won't pretend to be
14 an expert on that particular rule.

15 MR. HARTMAN: I -- I'm sorry.

16 THE COURT: No. Go ahead.

17 MR. HARTMAN: I can tell the Judge specifically
18 that our expert, Dr. Shy, has identified a number of
19 different reasons to play these recordings to show the kind
20 of communication, A, that was happening, the kind of
21 miscommunication that was happening, which is not offered
22 for the truth of what was being said. For an example, the
23 work training, the -- the -- the 18 to 20 different
24 contexts in which Mr. El-Hindi uses the word training
25 talking to Mr. Griffin where Mr. Griffin is trying to make

1 it sound another way entirely; and we're not trying to
2 offer for the truth of what the training was according to
3 Mr. El-Hindi, but the fact that the communication between
4 the two was so far off.

5 THE COURT: Why is it appropriate to wait and
6 have you do that in your own case rather than
7 cross-examination?

8 MR. HARTMAN: Well, part of it -- it can be --
9 and we didn't get that ruling from the Judge. But part of
10 the reason not is because that's the impression that he
11 made on the stand during his direct. And that's where the
12 C, D and E come in. And if the Judge tells us to hold
13 on -- X and Y for our own case, that's fine. We can do
14 that.

15 MR. SOFER: Judge, if -- if even an inkling or a
16 piece of the reason to put this in relates to the testimony
17 of this Dr. Shy, I think we're headed down a very difficult
18 and long path.

19 THE COURT: Well, I would agree that it seems to
20 me that as a general proposition that it's appropriate to
21 permit the defense to offer evidence that shows that
22 Mr. Griffin was undertaking to direct the conversation and
23 as it were a defendant was not rising to the bay or for
24 lack of the conversation as it were to speak for itself in
25 that regard and to let it at some point be played to the

1 jury, because I think that it's a fair approach to say,
2 Wait a minute. El-Hindi was talking about doing X and Y
3 and Griffin kept trying to link that with A and B.

4 But to that extent, since we have a -- they'll
5 speak for themselves; and the inferences that can be drawn
6 from that. Ladies and gentlemen, we played you 2, 4, 0,
7 24, however many excerpts; and every single time El-Hindi
8 would talk about X or Y or Z or U or W, Griffin turns
9 around and starts talking about A and B. You heard the
10 recordings.

11 I don't think we need to -- Mr. Shy to tell us
12 that. I have real reservations about his -- admissibility
13 of his opinions, because I think if the evidence is heard
14 by the jury, it will be able to understand that. It may
15 take a long time for them to lay that out; and as I'm
16 indicating, I have a concern with that being done during
17 cross-examination.

18 MR. SOFER: And that's all I'm saying, Judge --

19 THE COURT: I'm not totally foreclosing that,
20 because I can also see in terms of simply impeaching
21 Mr. Griffin's credibility and highlighting his status,
22 although cast the searchlight rather than a flashlight.
23 His status, if I'm understanding the defense theory, is
24 simply out there fishing and trying to drag whomever and
25 whatever he can into a net, so he can continue to get

1 \$5,500 a month. I think it may well be a fair area of
2 cross-examination to say with some frequency and regularity
3 and deliberately you would interject the issue of, quote,
4 training into the conversations you've had with any -- with
5 Mr. Amawi, Mr. El-Hindi, Mr. Masloun.

6 And if he says, No, it didn't; they brought it
7 up, well then, it may be appropriate to permit some of the
8 excerpts -- excerpts to come in. If he says, Yes, I did,
9 then fine, point is made; and we can make whatever use of
10 it you want either an argument or you can show that this
11 was, in fact, so. And I think -- but I think that the --
12 it's an entirely -- you're talking about a conspiracy.

13 Conspiracy is both acts and speech. And a lot --
14 the Government's offered what it believes proof of both
15 kinds. And I think the defendants are entitled to say,
16 Wait a minute. You know, yeah, it said that. But let's
17 listen to the rest of the conversation, or let's listen to
18 what we talked about later down the road. Hear me out.
19 This is what I kept trying to go to. I kept raising the
20 issue of whatever -- the subject of whatever, the topic;
21 and every time I did, Griffin would come back.

22 But I -- to that extent, I think that's defense
23 case; and we would hear it then. And candidly, I'm not
24 quite sure as to how we do that procedurally while
25 permitting the defendants if they so desire to elect not to

1 testify themselves. That's another whole issue, and I
2 don't know the answer to that issue. We don't have to
3 worry about that hopefully sooner than later, but right now
4 this morning --

5 MR. SOFER: And I think, Your Honor, that the
6 Government does not object to this notion of
7 cross-examining Mr. Griffin on this subject. I think the
8 defense should be permitted to cross-examine, and I'm sure
9 they'll have their own way of doing it in the exact manner
10 that Your Honor just suggested.

11 And that's all we're saying, is that we just have
12 to follow the rules here; and the rules are, you can't put
13 in hearsay, and -- but you can cross-examine. And if the
14 witness does deny saying certain things and they want to
15 then put them into -- these statements in to impeach him,
16 then Mr. Griffin's statement certainly could be done that
17 way. And I think you could even, to some extent, do this
18 with some of the statements that the defendants,
19 themselves, as long as it's interwoven into an appropriate
20 cross-examination.

21 What the Government objects to is this notion of
22 putting in -- the conversations, themselves, into evidence,
23 which, again, appears to be what the defense was trying to
24 do. And if they want to do that, you know, we have yet to
25 resolve whether the defense in this case is going to be

1 entrapment. I understand -- said the defense does not have
2 to tell the Government that at this juncture. On the other
3 hand, that's an issue that I think is important in trying
4 to analyze this.

5 If the defense is going to go with entrapment,
6 then they have to -- the Government has certain burdens;
7 the defense has certain burdens. This is not the first
8 time this has happened in a courtroom, and there are a lot
9 of cases to describe how this is properly done. That's all
10 we're asking is that they have to follow the rules. And I
11 think Your Honor put your finger on it. That is the
12 appropriate way of going about doing this, and I do think
13 it would be helpful to do this with concrete examples.

14 And by the way, I should say with Mr. Ivy on the
15 phone, we've -- we've -- it doesn't take a rocket scientist
16 to figure out why the defense has chosen what they've
17 chosen, I don't think. Of course, we may find out we're
18 wrong about things. But we have similar concerns about
19 some of the things that the -- the reason we sent you an
20 E-mail last night is we got a chance to take a look at all
21 of the Amawi clips or segments, and we have similar
22 concerns about those as well.

23 THE COURT: Excuse me. Excuse me. Mr. Ivy, may
24 I suggest that -- for two reasons: One, he's not here; and
25 it's difficult with the phone connection to hear him

1 clearly for whatever reason, that perhaps that is something
2 we can address late this afternoon specifically, because:
3 A, the volume of transcripts is apparently a lot less. And
4 that may be -- and he'll be here later this afternoon. And
5 you can at least have a trial move on.

6 As I was going to say -- my inclination at the
7 very least -- I think what I'm going to have Amy do is have
8 the jurors contacted and indicate that they need not report
9 until noon tomorrow. If we can get started at noon
10 tomorrow, terrific. If we can't, we'll contact them in the
11 morning. We will start Wednesday at 8:30 no matter what.
12 If it means no sleep between now and then, that's the way
13 it's going to be.

14 And I understand -- you know, I want to do this
15 in an orderly and fair fashion and reach some decisions so
16 that we're not having sidebar every excerpt that is
17 undertaken to play. And I would like every extent humanly
18 possible, given the limited amount of time we do have, to
19 at least make rulings on the specific excerpts so that the
20 defendants know and counsel know when they stand up what's
21 coming in now and what may come in later. And I think
22 that's in everybody's interest.

23 The record should show that Mr. Helmick, the tag
24 team member for Mr. Masloun is here.

25 Jeff, we're talking about the -- obviously the

1 transcript issue; and before you came in -- or as you came
2 in, I was saying that as a general proposition where the
3 parties said A, B and C and an excerpt of D and E that's
4 linked approximately to the conversation there, may be
5 separated by a few minutes. But anyway, it's clearly part
6 of the A, B and C discussion; and defendants want to show D
7 and E. That probably is appropriate on cross-examination.
8 But where the conversation was about X and Y, probably not.

9 And in any event, to the extent that a series of
10 excerpts -- G and H, M and N, P and Q -- are all undertaken
11 to show that Griffin was a broad -- to use a fishing
12 analogy maybe casting a net, maybe fly-fishing, and that he
13 would keep returning one -- a defendant would start talking
14 about something, for example, maybe watching a video. I'm
15 just speculating. Okay. And there may be conversations.

16 We all know the videos were introduced, and I
17 don't know whether we produced all of the audio. The
18 viewing video, I know we did not. But anyway, I'm groping,
19 because I don't know what you have in mind. I haven't seen
20 the transcripts, but my point simply is that seems to me to
21 be defense case appropriate to the extent where you will be
22 defending contentions about intent and agreement by saying,
23 Hey, wait a minute. In the agreement, it's unilateral,
24 because sure, there was a lot of talk about training
25 involving Griffin.

1 We kept talking about this, that and the other
2 thing, and to the extent that the excerpts that the
3 Government has seen that it finds troublesome are of that
4 sort. And I would anticipate agreeing with it, Wait a
5 minute. That's fine. I accept that theory in general.
6 I'm not ruling, but it makes sense to me. Look, you know,
7 because conspiracy is part conduct, the agreement part and
8 part conversation. And I would expect -- quite candidly,
9 my inclination is to give you guys a pretty free hand at
10 that; but certainly, not to do it, doesn't seem to me the
11 next couple of days is appropriate.

12 The other thing you probably picked up on, I
13 think what I would like to do and I think what I have to do
14 is sit down on an excerpt-by-excerpt basis and go through
15 and rule on them before we bring Mr. Griffin back. So, at
16 the very least, because I still don't have all the
17 transcripts from El-Hindi's side, okay, that's where we
18 are.

19 MR. HELMICK: Thank you, Judge.

20 THE COURT: I don't think we've missed anything.
21 Steve, go ahead.

22 MR. HARTMAN: If I may, part of the problem is we
23 are overestimating the excerpts that we're going to use on
24 purpose.

25 THE COURT: That's fine. That's -- I would

1 rather do that and spend the time before the jury's back in
2 the building than spending a lot of time at sidebar.

3 MR. IVEY: Your Honor --

4 MR. HARTMAN: Tim, hang on one second. Just so
5 we're clear, is the Court saying that for the purposes of
6 cross-examination, we're to be limited to playing excerpts
7 from conversations that Griffin -- that the Government
8 covered during direct?

9 THE COURT: No. No. I don't know what I'm going
10 to do, okay, because I haven't seen it. I think it's
11 crucial. I can't rule on this in the abstract. I'm trying
12 to sketch it out for you, as I sit here this morning, not,
13 you know, having some sense of what you have in mind. But
14 I don't think I can rule on this generally in the abstract
15 and say, You figure out which covers covered because that
16 leaves you too much decision; and nobody knows.

17 These -- you know, like any other evidentiary
18 rulings, I've got to do it, you know, objection by
19 objection and ruling by ruling. That's the way we do
20 things, one question, one objection, one ruling and one
21 answer sometimes.

22 MR. BOSS: Judge, I'd just like to make an
23 observation regarding --

24 THE COURT: Mr. Ivy, we'll get to you in a
25 second.

1 MR. IVEY: Sure. I'm sorry.

2 THE COURT: Now Chuck Boss is speaking.

3 MR. BOSS: As I'm thinking about the Government's
4 proposal to have portions -- for instance, there was a
5 couple of years and quite a few months and conversations
6 that predated the indictment where Mr. Griffin was with
7 Mr. El-Hindi; and there were conversations, among other
8 things, for instance, about Zubair and Khaleel, the two
9 boys from Chicago, which we believe are material and
10 important to our defense.

11 Now, if we have to wait until our direct case,
12 put Mr. Griffin on at that time to go over these matters,
13 it seems to me that it's going to cause a great deal of
14 confusion for the jury when it would be more efficient for
15 the jury's perspective and understanding to simply go
16 through and march through this stuff chronologically one
17 time instead of having to go back when we go on to our
18 direct case and have them, once again, go back and say, Oh,
19 well, this is being used to impeach what Mr. Griffin said
20 in that cross-examination section.

21 THE COURT: Well, impeachment is different from
22 defense. And again, I'm going to have to look -- another
23 good reason to look at what you've actually designated and
24 try to rule on that and hear you out. And sitting here, it
25 occurs to me that it may be entirely appropriate for you to

1 allude; in other words, be like the coming attractions at
2 the movies, for you to at least allude:

3 Mr. Griffin, you've had several conversations
4 with Mr. El-Hindi during the course of the period of time
5 you were seeing him that related to the Ahmeds; is that
6 correct?

7 Yes.

8 And those conversations generally involved M, N
9 and O; is that correct?

10 Yes.

11 And I may even -- I would think about simply
12 saying. Ladies and gentlemen, this testimony is offered at
13 the present time simply to -- in anticipation of evidence
14 that you may hear when and if the defense elects to put on
15 a case. I remind you, it doesn't have to, dah, dah, dah;
16 but if you want to kind of note -- at least say to them,
17 Folks, you hear the bugles over the hill. Well, the
18 Calvary is coming. It isn't quite here yet; but if it
19 doesn't get lost -- that's all. I think that's, again, a
20 concern maybe separated by a matter of months rather than a
21 matter of days and weeks.

22 MR. SOFER: A couple things about that, Judge.

23 THE COURT: And again, I can't really say until
24 we look at the conversations.

25 MR. SOFER: I understand. But it does bring up

1 another issue, which is this notion of putting in
2 conversations that predate either by -- some cases by a
3 year or so, maybe more; and that's another relevance issue,
4 whether or not the defense can bring in conversations that
5 predate the charge of conspiracy by six months, a year or
6 more whether they indeed are relevant in any way, shape or
7 form.

8 And I go back to -- and counsel just said, Well,
9 if we call Mr. Griffin in our case to put in those
10 conversations, we're back to the same concept. They
11 can't -- while there may be reasons on -- for particular
12 conversations that one can cross-examine the witness and
13 maybe even in some limited instances be able to introduce
14 some of these converse -- some of these portions, the
15 statements of the defendant are hearsay unless and until
16 there's an appropriate exception to the hearsay rule or
17 they don't -- they're not hearsay themselves.

18 And again, go back to -- and I do think this is a
19 preview of what we'll get to when we actually see these
20 conversations; but the notion of calling Mr. Griffin in the
21 defense case in order to introduce essentially the out of
22 court testimony statements of the defendants is highly
23 inappropriate. If they want to put those statements in,
24 they have to get on the stand.

25 THE COURT: It depends upon the purpose for which

1 the statements are made.

2 MR. SOFER: Indeed.

3 THE COURT: And I can't rule on those until I see
4 the statements. So, we will -- what I would like to do, if
5 we can, is to -- Mr. Ivy has been waiving his hand in the
6 air -- and -- but what I'd like to do is get together this
7 evening, if it seems opportune to do so, maybe around 4:00
8 or 4:30 and have everyone in -- effect a practice run by
9 looking at what they are -- what they have designated and
10 with him here in person. In other words, perhaps -- and
11 obviously with the defendants here as well. I'm not really
12 sure they're entitled to be here, but I think it's better
13 that they are. And then go from there.

14 Mr. Ivy, you've kept getting cut off. The open
15 mike is now yours. And if you can speak very slowly and
16 very clearly, because it may be the volume here. I'm not
17 sure. But it's -- the modulation is -- it's difficult, but
18 go ahead.

19 MR. IVEY: Well, the first -- I had two points.
20 The first one I'm going to reserve, because the Court has
21 indicated we're going to get together this evening; and I
22 think I'd be more effective if I was in the courtroom. So
23 I will reserve my arguments about the procedure and what's
24 proper on cross-examination for that time.

25 My other issue that I do want to bring up now is

1 my request to begin Wednesday morning; and the reason I'm
2 making that request is that whenever it is determined what
3 we can and cannot play, I need time to meet with visual
4 evidence to go over the technicalities of this. I'm very
5 technically challenged quite frankly.

6 THE COURT: Mr. Ivy, motion granted. We'll start
7 on Wednesday, so everybody knows what the deal is. I note
8 the Government's objection but I think it's too much to try
9 to handle and it leaves everybody too uncertain. And we'll
10 start on Wednesday morning. As I say, we will start at
11 8:30 Wednesday morning.

12 MR. IVEY: And I really think that if we go
13 first, our issues will be the same.

14 THE COURT: I understand. I accept that. And I
15 think you're absolutely correct. Everybody will know
16 what's to come.

17 And I certainly hope that I will be able this
18 evening -- I do want to get together this evening, because
19 I don't want to let the time go. And I certainly hope that
20 these very crucial movements will be made as to everything
21 has been designated, so everybody -- Government and defense
22 and the defendants between themselves know what is going to
23 come in and what isn't and what won't ever. And perhaps --
24 and although I may be doing some reserving of the rulings
25 in terms of what we set off to one side in the defendants'

1 case, I'd like to focus on what's going to be admitted or
2 not admitted during cross-examination. So if you can be
3 available by perhaps 4:30.

4 Angela, can you or Tracy --

5 THE COURT REPORTER: Yes.

6 THE COURT: I'm sorry.

7 MR. SOFER: Judge, if I may, I don't know if you
8 wanted to deal with these now or this evening; but I just
9 want to preview a couple issues so that we are prepared
10 this evening to deal with them.

11 There remains a number of logistical problems.
12 The two biggest ones are we've received PDFs, I think,
13 again, only from the El-Hindi team; and for us to do a
14 side-by-side comparison of documents, we need a Word or
15 WordPerfect document, so we can throw them in the computer
16 and not sit there and go line by line ourselves. That's a
17 very tedious and long process. The computer can do it --
18 that much faster and much better than we can.

19 THE COURT: Excuse me. Is there any reason that
20 Counsel cannot comply with that request?

21 MR. HELMICK: For some of the transcripts, yes,
22 there is, because we get them in PDF.

23 MR. BOSS: These are the Government transcripts
24 principally that we're returning to them. They refused to
25 give them to us in Word or WordPerfect despite the number

1 of changes that are made. We are returning to them in the
2 same format that we received them. We haven't been able to
3 change them.

4 MR. SOFER: To my knowledge, that's not accurate,
5 Judge; but we'll talk to Counsel. The bottom line is, if
6 we -- we don't have them in a Word document, then we're
7 going to -- it's going to take much longer, that's all, for
8 us to examine them.

9 THE COURT: Talk with them. I don't -- you --
10 your reach has exceeded my grasp with the technology.

11 MR. SOFER: The other technical issue is --

12 THE COURT: Mr. Helmick seems to be the
13 technology guru, or it may be even if -- if I can try to
14 put you in touch with some of the court people to see if
15 they can help. But all I can say is comply with that
16 request if possible -- technically possible.

17 MR. SOFER: Second technical issue is we have
18 found what we believe to be errors in -- and again, I've
19 had an opportunity now with Amawi as opposed to the
20 El-Hindi ones; and we found a number of errors in the
21 defense version of transcripts. They include sections, not
22 very many of them, in which the Government maintains that
23 something is inaudible; and the defense has filled in that
24 blank. We've asked on a number of occasions now, some of
25 these audios were sent out for some kind of enhancement.

1 THE COURT: Okay. And you have an enhanced
2 version? Does anybody on the defense stand?

3 MR. HARTMAN: We have enhanced versions, yes.

4 THE COURT: Can you make those available now to
5 the Government?

6 MR. HARTMAN: Yes.

7 THE COURT: Okay. Mr. Ivy, do you
8 have enhanced -- you say we, Mr. Hartman. Is that the
9 whole crowd or just El-Hindi?

10 MR. HARTMAN: I don't know if we gave those to
11 the Government or not. I don't think you asked us for
12 them.

13 THE COURT: My question is --

14 MR. HARTMAN: I meant the federal defenders.

15 THE COURT: Mr. Ivy, do you have enhanced
16 versions? If so, they should be made available to the
17 Government.

18 MR. IVEY: To my knowledge, they are not; but if
19 they are, then I'll make sure we get them to them.

20 THE COURT: Today?

21 MR. IVEY: Yes. My instructions to the people
22 doing this for me was that to every extent possible, use
23 the Government transcript. So, I don't think we're going
24 to have a big issue on whatever they claim to have changed
25 or isn't right.

1 THE COURT: The other thing I would contemplate
2 trying to accomplish, then, is a determination whether
3 there'll be one, two or three versions. A version that I
4 say this is what I hear and that's what the jury's going
5 to -- what will appear in the transcript or if I can't,
6 we'll do a connection audibility -- sometime tomorrow --

7 MR. SOFER: That's essentially what I was trying
8 to preview. There aren't that many of these, Judge. I
9 think this can be done in less than an hour.

10 THE COURT: What about with El-Hindi, though?

11 MR. SOFER: I don't know. It's impossible for me
12 to answer that question.

13 THE COURT: What about Masloun?

14 MR. SOFER: No problem with Masloun. As I
15 understand it, they're using Government transcripts; and I
16 would note for the record that I have heard, as Your Honor,
17 I think, that is, we tried to err on the side of being
18 careful.

19 THE COURT: There was some marked -- some
20 occasional passages marked inaudible, and I knew what was
21 being said. And we'll just have to -- we'll have to stop,
22 look and listen when the time comes.

23 MR. SOFER: And again, the jury has been --
24 continued to be instructed that it's the audio that they
25 hear, not the transcripts. I would object to multiple

1 versions of transcripts. I think we can --

2 THE COURT: I do think that it is within my
3 discretion if they somehow seem equally plausible to allow
4 the different versions. It's -- it's vastly preferable to
5 have a single version, but we'll try to work on that as
6 well to the extent that you folks can. But by all means,
7 get them -- those of you who have enhanced versions, I want
8 those in the Government's hands by 9:00 this morning -- or
9 noon -- as soon as you can get them.

10 MR. HARTMAN: The --

11 MR. IVEY: Your Honor, what time would you like
12 us in court this evening?

13 THE COURT: I'd like -- if you can be in the
14 building around 4:00, I may not be able to get with you
15 until about 5:00. It depends. I have an extremely full
16 day. I'm going to try to -- unless Amy quits on me -- try
17 to get the couple of things that are set this afternoon,
18 get people on the phone earlier. I'm going to try to move
19 as briskly as I can; but as -- 4:00 as soon thereafter as
20 I'm available.

21 MR. IVEY: Okay.

22 THE COURT: And I'm going to plan to work on into
23 the evening until our stamina and patience are exhausted or
24 it's not worth while, because there are things that can be
25 more properly attended to by adjourning until tomorrow

1 morning.

2 MR. IVEY: Okay.

3 MR. SOFER: Lastly, Judge, I'm hopeful that
4 before cross-examination continues, we can have the
5 conversation, I think, the Court wanted to have beyond
6 these transcripts which is --

7 THE COURT: That's fine.

8 MR. HARTMAN: What are the appropriate areas?

9 THE COURT: That's fine.

10 MR. SOFER: -- for cross-examination generally,
11 so we don't end up at sidebar every other --

12 THE COURT: That's fine. Okay. Let me just --
13 anything other -- that you want to mention now for the
14 Government?

15 MR. SOFER: No, Judge.

16 THE COURT: Okay. And Steve?

17 MR. HARTMAN: No, Your Honor.

18 MR. IVEY: We'll -- we'll be up there this
19 afternoon by 4:00.

20 THE COURT: I hope you can get in to Judge Leroy
21 and thank her, please, for her consideration; and I'll see
22 you this afternoon. Drive carefully.

23 MR. IVEY: Thank you, Your Honor.

24 THE COURT: Huh?

25 MR. IVEY: I just said, Thanks, Your Honor.

1 THE COURT: Since when did you learn Greek?

2 Okay. Jeff, anything for you at all?

3 MR. HELMICK: No, not at this time, Judge.

4 Thanks.

5 THE COURT: See you guys sometime after 4:00.

6 MR. SOFER: Judge, I'm going to make copies of a
7 few cases and have them sent over to you on this -- that we
8 anticipate hearsay in particular if that's acceptable.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

s:/ Angela D. Nixon

Angela D. Nixon, RPR, CRR

Date